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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 8569 of 1987

Date of decision:17.9.2007

Indian Oil Corporation Ltd. ...Petitioner

Versus

Municipal Committee, Patiala and another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. S.C.Kapoor, Senior Advocate with
Mr. Harminder Jeet Singh, Advocate for the petitioner.

Mr. Hemraj Mittal, Advocate for the respondents.

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RAJESH BINDAL, J.

Challenge in the present petition is to the orders dated March 3, 1986 and October 29, 1986 (Annexure P-4 and Annexure P-6), passed by Administrator, Municipality, Patiala and Additional Deputy Commissioner, Patiala respectively, whereby the rental value of the property of the petitioner was assessed at Rs. 8000/- per month and house tax was accordingly calculated.

2. Learned counsel for the petitioner submitted that the land in question infact belongs to the Central Government on which the petitioner had raised building. The Municipal committee had assessed the rental value of the building at Rs. 2500/- per month, which assessment continued upto the year 1984-85. The tax calculated thereon has been paid by the petitioner. However, during the year 1985-86 the petitioner merely added two rooms in the building but the respondents-Committee proposed the enhancement in the rental value from Rs. 2500/- per month to Rs. 15,000/- per month and accordingly issued a notice on October 24, 1985. It further provided that in case the petitioner had any objection the same can be filed within a month. The proposed assessment was objected to by the petitioner.

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However, still without considering the legal position, the respondent-Committee assessed the rental value of the property at Rs. 8000/- per month vide order dated March 11, 1986 (Annexure P-4). In appeal before the Deputy Commissioner also, order passed by the Administrator, Municipal Committee, Patiala was upheld.

3. The solitary contention raised by learned counsel for the petitioner is that for the purpose of determination of rental value, the principles laid down under the Rent Control Legislation were to be applied, which the respondents have failed to do. He referred to the judgments in **Kehar Singh Vs. The Municipal Committee, Phagwara and another 1980 Revenue Law Reporter 491**, **Punjab Concast Steels Ltd. Vs. The Municipal Corporation, Ludhiana and another 1984 Revenue Law Reporter, 394** and **Indian Oil Corporation Ltd. Vs. Commissioner, Jalandhar Division, Jalandhar and another 1997(1) Punjab Law Reporter 545.**

4. On the other hand, learned counsel for the respondents submitted that building in question is quite huge. Substantial construction were raised by the petitioner during the year in question and further that issue regarding fixing of rental value in terms of the Rent Control Legislation having not been raised before the authorities below, the plea cannot be raised in the writ petition. He further submitted that rental value assessed by the respondents-Committee is quite reasonable seeing the quantum of construction. In reply to the plea raised by learned counsel for the respondents on the issue of fixation of rental value in terms of provisions of Rent Control Legislation, learned counsel for the petitioner submitted that the same could very well be raised before this Court in the writ petition for the first time being a legal issue.

5. Having heard learned counsel for the parties, I find merit in the contention raised by learned counsel for the petitioner. Hon'ble the Supreme Court in **Devan Daulat Rai Kapoor etc. etc. Vs. New Delhi Municipal Committee and another etc. etc. AIR 1980 Supreme Court 541** while dealing with an identical issue, held as under:-

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> "Where a building is governed by the provision of Rent Control Legislation the landlord cannot reasonably be expected to receive anything more than the standard rent from a hypothetical tenant and the annual value of the building cannot therefore exceed the standard rent. Even in case of a building in respect of which no standard rent has been fixed within the prescribed period of limitation and thus the tenant is precluded from making an application for fixation of standard rent with the result that landlord is lawfully entitled to continue to receive the contractual rent, the annual value must be limited to the measure of standard rent determinable under the Rent Act and cannot be determined on the basis of the higher rent actually received by the landlord from the tenant. Even if the standard rent has not been fixed by the Controller, the landlord cannot reasonably expect to receive from a hypothetical tenant anything more than the standard rent determinable under the Act and this would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of the standard rent or the building is self-occupied by the owner. The assessing authority would, in either case, have to arrive at its own figure of the standard rent by applying principles laid down in the Delhi Rent Control Act, 1958 for determination of standard rent and determine the annual value of the building on the basis of such figure of standard rent."

Following the same, a Division Bench of this Court in Kehar Singh's case (supra) held as under:-

> "It cannot be disputed that the conclusion arrived at by the Deputy Commissioner is not sustainable in law. It has been authoritatively held by their Lordships of the Supreme Court that under the provisions of section 3 (1) (b) of the Act, the

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annual value of a building would be the gross annual rent at which such house or building may reasonably be expected to let from year to year. It has been held that if the property is situate in a town where the provisions of the East Punjab Urban Rent Restriction Act are applicable in that case, the annual letting value shall have to be determined keeping in view the provisions of section 4 of the Act, i.e. the standard rent which can be fixed even though no order has been passed for fixing the standard rent because the property is self occupied. Reference in this connection may be made to the decision of their Lordships of the Supreme Court in Dewan Daulat Rai Kapoor and others Vs. New Delhi Municipal Committee and others."

6. The same view is expressed in other authorities cited by learned counsel for the petitioner. Learned counsel for the respondent could not controvert the legal issue raised by the petitioner regarding fixation of annual rental value as no authority taking a view contrary thereto was cited.

7. Following the dictum of law laid down in the Devan Daulat Rai Kapoor etc. etc.'s case (supra), I am of the considered opinion that the impugned orders dated March 3, 1986 and October 29, 1986 (Annexure P-4 and Annexure P-6) respectively are contrary to the law laid down by Hon'ble the Supreme Court. The same are, accordingly, set aside and the case is remitted back to the respondent no.1 for re-determination of the annual rental value in accordance with law after affording an opportunity of hearing to the petitioner.

The writ petition is disposed of in the manner indicated above.

September 17, 2007 **(Rajesh Bindal)**
Pka **Judge**